IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8305 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AIRPORTS AUTHORITY OF INDIA NATIONAL AIRPORT DIVISION - Petitioner(s)

Versus

MAKABHAI N DABHI - Respondent(s)

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Appearance :

MR SV RAJU for Petitioner No(s).: 1.

MR YV SHAH for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 10/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 26th August, 1987 passed by the Industrial Tribunal in Reference [I.T.] No. 3 of 1985 whereby the Industrial Tribunal has directed the petitioner to reinstate the respondent in service along with full back

wages and other benefits.

2. The short facts of the case are that the respondent was working as a Chowkidar on daily wage basis. The petitioner without following any procedure under the Industrial Disputes Act, 1947, the services of the respondent was terminated w.e.f. 1st October, 1982. Being aggrieved by the said termination order, the respondent raised an industrial dispute which was ultimately referred to the Industrial Tribunal, Ahmedabad adjudication. The Industrial Tribunal after considering the matter on merits, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. While admitting the matter, this Court on 20th November, 1998 had not stayed the impugned award. Therefore, the respondent is reinstated in service. Since the respondent is already reinstated in service, in the interest of justice it would not be appropriate to disturb the said position at this stage. Hence, this Court is not considering this petition so far as the grant of reinstatement is concerned.

4. Having gone through the award, it appears that the Industrial Tribunal has not given any cogent reasons as to on what basis, it has awarded full back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The impugned award dated 26th August, 1987 passed by the Industrial Tribunal in Reference [I.T.] No. 3 of 1985 is quashed and set aside and rest of the award is confirmed. The petitioner shall grant the respondent

benefit of continuity in service and all the benefits from the date of publication of the award i.e., from 17th September, 1987 till the actual reinstatement in service. The same shall be paid within three months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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